



DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 2

[DOI-2020-0014; DS65100000, DWSN00000.000000, DP.65106, 21XD4523WS]

RIN 1090-AB13

Privacy Act Regulations; Exemption for the Physical Security Access Files System

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior is issuing a final rule to amend its regulations to exempt certain records in the INTERIOR/DOI-46, Physical Security Access Files, system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative law enforcement requirements.

DATES: The final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240, DOI_Privacy@ios.doi.gov or (202) 208-1605.

SUPPLEMENTARY INFORMATION:

Background

The Department of the Interior (DOI) published a notice of proposed rulemaking (NPRM) in the *Federal Register* at 85 FR 7515 (February 10, 2020) proposing to exempt portions of the INTERIOR/DOI-46, Physical Security Access Files, system of records from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2), (k)(3), and (k)(5) due to criminal, civil, and administrative law enforcement requirements. The

INTERIOR/DOI-46, Physical Security Access Files, system of records notice (SORN) was published in the *Federal Register* at 85 FR 3406 (January 21, 2020). Comments were invited on both the Physical Security Access Files SORN and NPRM. DOI received one comment on the SORN and one comment on the NPRM that were not relevant to the subject. The rulemaking will be implemented as proposed with three corrections.

The word “Access” was inadvertently omitted from the system name in the NPRM. The system name is corrected to “Physical Security Access Files” in paragraphs (c)(19), (d)(1), and (e)(5) of this final rule, which is consistent with the INTERIOR/DOI-46 SORN published in the *Federal Register* at 85 FR 3406 (January 21, 2020).

Paragraph (b)(18) of the NPRM was reserved for the INTERIOR/BSEE-01, Investigations Case Management System (CMS), which became effective when the final rule was published in the *Federal Register* at 85 FR 1282 (January 10, 2020). Paragraph (b)(18) has been redesignated to (c)(18) for the INTERIOR/BSEE-01, Investigations Case Management System (CMS), as described in this final rule. A non-substantive editorial change was made to correct the formatting for the list of exempt systems in subsection 2.254 paragraphs (c), (d) and (e) to reflect the SORN number followed by the SORN title to be consistent with DOI’s current SORN format.

Procedural Requirements

1. Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation’s regulatory system to promote predictability, to reduce

uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. DOI developed this rule in a manner consistent with these requirements.

2. Regulatory Flexibility Act.

DOI certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). This rule does not impose a requirement for small businesses to report or keep records on any of the requirements contained in this rule. The exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the Regulatory Flexibility Act.

3. Small Business Regulatory Enforcement Fairness Act (SBREFA).

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act.

This rule does not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or on the private sector, of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. This rule makes only minor changes to 43 CFR Part 2. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

5. Takings (E.O. 12630).

In accordance with Executive Order 12630, the rule does not have significant takings implications. The rule is not a governmental action capable of interference with constitutionally protected property rights. This rule makes only minor changes to 43 CFR Part 2. A takings implication assessment is not required.

6. Federalism (E.O. 13132).

In accordance with Executive Order 13132, this rule does not have any federalism implications to warrant the preparation of a Federalism Assessment. The rule is not associated with, nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. A Federalism Assessment is not required.

7. Civil Justice Reform (E.O. 12988).

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- (a) Does not unduly burden the judicial system.
- (b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

8. Consultation with Indian Tribes (E.O. 13175).

In accordance with Executive Order 13175, DOI has evaluated this rule and determined that it would have no substantial effects on federally recognized Indian Tribes.

9. Paperwork Reduction Act.

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required.

10. National Environmental Policy Act (NEPA) of 1969.

This rule does not constitute a major Federal Action significantly affecting the quality for the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. We have determined the rule is categorically excluded under 43 CFR 46.210(i) because it is administrative, legal, and technical in nature. We also have determined the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

11. Data Quality Act.

In developing this rule, there was no need to conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554, section 515).

12. Effects on Energy Supply (E.O. 13211).

This rule is not a significant energy action under the definition in Executive Order 13211, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. A Statement of Energy Effects is not required.

13. Clarity of this Regulation.

We are required by Executive Order 12866 and 12988, the Plain Writing Act of 2010 (Pub. L. 111-274), and the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means each rule we publish must:

- Be logically organized;
- Use the active voice to address readers directly;
- Use clear language rather than jargon;
- Be divided into short sections and sentences; and
- Use lists and tables wherever possible.

List of Subjects in 43 CFR Part 2

Administrative practice and procedure, Confidential information, Courts, Freedom of Information Act, Privacy Act.

For the reasons stated in the preamble, the Department of the Interior amends 43 CFR part 2 as follows:

PART 2 - - FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 3717; 43 U.S.C. 1460, 1461.

2. Revise § 2.254 to read as follows:

§2.254 Exemptions.

(a) *Criminal law enforcement records exempt under 5 U.S.C. 552a(j)(2).*

Pursuant to 5 U.S.C. 552a(j)(2) the following systems of records are exempted from all of the provisions of 5 U.S.C. 552a and the regulations in this subpart except paragraphs (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), (11), and (12), and (i) of 5 U.S.C. 552a and the portions of the regulations in this subpart implementing these paragraphs:

- (1) INTERIOR/FWS-20, Investigative Case File System.
- (2) INTERIOR /BIA-18, Law Enforcement Services System.

- (3) INTERIOR/NPS-19, Law Enforcement Statistical Reporting System.
- (4) INTERIOR/OIG-02, Investigative Records.
- (5) INTERIOR/DOI-10, Incident Management, Analysis and Reporting System.
- (6) INTERIOR/DOI-50, Insider Threat Program.
- (b) [Reserved]

(c) *Law enforcement records exempt under 5 U.S.C. 552a(k)(2).* Pursuant to 5 U.S.C. 552a(k)(2), the following systems of records are exempted from paragraphs (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these paragraphs:

- (1) INTERIOR/OIG-2, Investigative Records.
- (2) INTERIOR/FWS-21, Permits System.
- (3) INTERIOR/BLM-18, Criminal Case Investigation System.
- (4) INTERIOR/BLM-19, Civil Trespass Case Investigations.
- (5) INTERIOR/BLM-20, Employee Conduct Investigations.
- (6)-(7) [Reserved]
- (8) INTERIOR/NPS-17, Employee Financial Irregularities.
- (9) INTERIOR/Reclamation-37, Trespass Cases.
- (10) INTERIOR/SOL-1, Litigation, Appeal and Case Files System, to the extent that it consists of investigatory material compiled for law enforcement purposes.
- (11) INTERIOR/FWS-19, Endangered Species Licenses System.
- (12) INTERIOR/FWS-20, Investigative Case File System.
- (13) INTERIOR/BIA-24, Timber Cutting and Trespass Claims Files.
- (14) INTERIOR/DOI-11, Debarment and Suspension Program.
- (15) INTERIOR/DOI-10, Incident Management, Analysis and Reporting System.
- (16) INTERIOR/DOI-50, Insider Threat Program.
- (17) INTERIOR/DOI-24, Indian Arts and Crafts Board.

(18) INTERIOR/BSEE-01, Investigations Case Management System (CMS).

(19) INTERIOR/DOI-46, Physical Security Access Files.

(d) *Records maintained in connection with providing protective services exempt under 5 U.S.C. 552a(k)(3).* Pursuant to 5 U.S.C. 552a(k)(3), the following systems of records have been exempted from paragraphs (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these paragraphs:

(1) INTERIOR/DOI-46, Physical Security Access Files.

(2) [Reserved]

(e) *Investigatory records exempt under 5 U.S.C. 552a(k)(5).* Pursuant to 5 U.S.C. 552a(k)(5), the following systems of records have been exempted from paragraphs (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these paragraphs:

(1) [Reserved]

(2) INTERIOR/GS-9, National Research Council Grants Program.

(3) INTERIOR/OS-68, Committee Management Files.

(4) INTERIOR/DOI-11, Debarment and Suspension Program.

(5) INTERIOR/DOI-46, Physical Security Access Files.

Signed: _____
Teri Barnett
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Department of the Interior